IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

C.W.P. No. 1026 of 2005

DATE OF DECISION: 5.7.2007

Baldev Singh

…Petitioner

Versus

State of Punjab and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. D.S. Patwalia, Advocate,
for the petitioner.

Mr. Amol Rattan Singh, Addl. AG, Punjab,
for respondent No. 1.

Mr. G.S. Sandhawalia, Advocate,
for respondent Nos. 2 and 3.

JUDGMENT

M.M. KUMAR, J.

The substantive question of law sought to be raised in this petition filed under Article 226 of the Constitution is whether the petitioner would be deemed to be a confirmed employee in view of the fact that he had completed maximum period of probation including extension, as provided by Rule 10 of the Punjab State Agricultural Marketing Board (Class II) Service Rules, 1988 (for brevity, 'the Service Rules'). He has challenged order dated 1.12.2003/2.1.2004 (P-7) reverting him from the post of Secretary, Market Committee to that of Assistant Secretary and also order dated

13.9.2004/23.11.2004 (P-8) dismissing his appeal by the Additional Secretary to Government of Punjab. The petitioner has claimed that he is entitled to work on the post of the Secretary, Market Committee, to which he was promoted and he may be paid salary with effect from the date he was promoted as Secretary on 25.2.2000.

BRIEF FACTS

The petitioner was initially appointed on ad hoc basis in the Punjab Mandi Board-respondent No. 2 (for brevity, 'the Board') as Assistant Secretary in the year 1979. His services were regularised on 24.2.1983. However, he has been officiating on the post of Secretary from 1982 to 2000. In the seniority list of Assistant Secretary, the name of the petitioner figures at Sr. No. 24, which is ahead of the name of Shri Harinder Singh Randhawa, who was at Sr. No. 25. Both of them were eligible for promotion to the post of Secretary, Market Committee. Shri Harinder Singh Randhawa, who was junior to the petitioner in the cadre of Assistant Secretary was promoted on 30.3.1995 and the case of the petitioner could not be considered for promotion on account of the fact that the petitioner was facing charge sheet under Rule 8 of the Punjab Agricultural Marketing Service (Punishment and Appeal) Rules, 1988 (for brevity, 'the Punishment and Appeal Rules') for infliction of major penalty. On 24.7.1995/9.8.1995, the Chairman of the Board dropped the proceedings against the petitioner (P-1). It is appropriate to mention that the petitioner was facing charges of absence from duty which ranged from 4 to 5 days absence and on merit also he was either found on earned leave or casual leave after obtaining sanction which he over stayed on account of floods in the area.

After dropping of charge sheet, the petitioner made numerous representations to various authorities for consideration of his case for promotion. He eventually filed a revision petition before the Additional Secretary to Government Punjab, under Section 42 of the Punjab Agricultural Produce Market Act, 1961. In his order dated 4.10.1999 (P-2), the Additional Secretary holding the petitioner senior to Shri Harinder Singh Randhawa, issued direction to the Board to consider his case for promotion with effect the date Shri Harinder Singh Randhawa was promoted. The petitioner was promoted on the post of Secretary, Market Committee, vide order dated 25.2.2000 (P-3), without giving him promotion from a retrospective date of 30.3.1995 when person junior to him Shri Harinder Singh Randhawa was promoted. He again filed a revision petition before the Additional Secretary which is stated to be pending. The petitioner was not granted the salary of the post of Secretary, Market Committee for which representation was made on 27.4.2000 (R-3A). It is claimed that despite the direction issued by the District Mandi Officer to the Secretary of the Board to grant him pay scale of the post of Secretary, the petitioner was not given the salary of Secretary, Market Committee.

During the period the petitioner was working as Secretary, Market Committee, he was asked vide show cause dated 18.12.2002 to tender explanation concerning certain irregularities which were found during the course of inquiry, which pertained to period when he was posted as Secretary, Market Committee, Budhladha. On 10.8.2003/4.9.2003, an order of punishment stopping five annual increments of the petitioner without cumulative effect was

passed (P-4). In another matter of irregularities, the petitioner suffered the punishment of stoppage of one increment without cumulative effect, as per order dated 10.8.2003 (P-5). It has been claimed that since the orders of punishments dated 10.8.2003 (P-4 and P-5) have been passed after completion of maximum probation period of three years, he is deemed to be confirmed as Secretary, Market Committee, because he was regularly promoted as such.

The Chairman of the Board vide his order dated 1.12.2003 (P-7), reverted the petitioner to the post of Assistant Secretary by placing reliance on the orders dated 10.8.2003/4.9.2003 (P-4) and 10.8.2003/27.8.2003 (P-5). The Chairman also placed reliance on adverse remarks conveyed to the petitioner on 27.11.2003 in respect of the years 2000-2001 and 2001-2002. These adverse remarks were eventually set aside by the Revisional Authority, vide its order dated 5.7.2004 (P-6). The petitioner filed an appeal against the order dated 1.12.2003 (P-7). The Additional Secretary had initially stayed the operation of the order and eventually dismissed the appeal on 13.9.2004/23.11.2004 (P-8).

SUBMISSIONS:

Mr. D.S. Patwalia, learned counsel for the petitioner has made following three submissions before us:-

(a) The order dated 1.12.2003/2.1.2004 (P-7) and the order passed in appeal on 13.9.2004/23.11.2004 (P-8) proceeds on the assumption of wrong facts. According to the learned counsel, the impugned order dated 1.12.2003 takes into consideration the expunged adverse entries for the years 2000-2001 and 2001-2002, which have been below average. In that regard, he

has referred to the order dated 5.7.2004 (P-6) passed by the Additional Secretary, expunging the adverse remarks. Learned counsel has further argued that the charge sheet has also been dropped vide order dated 24.7.1995 (P-1), yet reference of the same has been imported in the impugned order.

(b) The other submission made by the learned counsel is that the order of reversion is stigmatic and in the absence of a regular departmental inquiry such an order could not be sustained in the eyes of law. He has referred to the Punishment and Appeal Rules which contemplates holding of a regular departmental inquiry in case any charges/allegations are to constitute the basis for reversion or any other major punishment.

(c) His last submission is that under Rule 10 of the Service Rules, persons appointed to the service are required to be kept on probation for a period of two years with maximum period of three years by including extension, if any. He has argued that the petitioner was promoted on the post of Secretary, Market Committee on 25/28.2.2000 (P-3) and he would be deemed to be confirmed by operation of law on or before February 2003. Therefore, passing of order on 1.12.2003/2.1.2004 (P-7) reverting him from the post of Secretary to that of Assistant Secretary is absolutely against the rules and the law laid down by Hon'ble the Supreme Court. In support of his submission, learned counsel has placed reliance on three judgments of Hon'ble the Supreme Court in the cases of **Chief General Manager, State Bank of India v. Bijoy Kumar Mishra, (1997) 7 SCC 550; Wasim Beg v. State of U.P., (1998) 3 SCC**

321 and **Rajinder Singh Chauhan v. State of Haryana, (2005) 13 SCC 179** and argued that once maximum period of probation along with extension has been provided then such a rule cannot be considered as 'open ended' probation rule and the same has to be considered as 'close ended absolute rule' which would enure to the benefit of the petitioner. Learned counsel has emphasised that once the petitioner has completed three years period of probation as Secretary, Market Committee, he is deemed to be confirmed.

Mr. G.S. Sandhawalia, learned counsel for the Board has vehemently argued that there is no reference made with regard to the charge sheet and the order does not suffer from any other factual error. He has highlighted that the reference to the Annual Confidential Reports, which was made by the Chairman of the Board in his order dated 1.12.2003 stand completely cured by the appellate order as no mention has been made about the adverse ACRs in appellate order. He has then pointed out that two orders dated 10.8.2003 (P-4 and P-5) inflicting punishments on the petitioner cannot be considered irrelevant because admittedly show cause notice was issued to the petitioner on 18.12.2002 in pursuance to which order dated 10.8.2003 (P-4) was passed and the second show cause notice was issued to him on 9.4.2003. Learned counsel has also emphasised that the impugned order is not liable to be set aside merely because it refers to various defects in the work and conduct of the petitioner. His last argument is that in the absence of the order of confirmation, it cannot be assumed that the petitioner has become a confirmed employee after successful completion of probationary

period. He has maintained that on the language of Rule 10 a positive order of confirmation is required to be passed by the competent authority in order to avail the benefit of confirmation. In support of his submission, learned counsel has placed reliance on judgments of Hon'ble the Supreme Court in the cases of **High Court of M.P. v. Satya Narayan Jhavar, (2001) 7 SCC 161** and **Mir Mohammad Khasim v. Union of India, (2004) 10 SCC 721**.

No other argument has been raised.

FINDINGS:

We have bestowed our thoughtful consideration to the respective submissions made by the learned counsel for the parties and have minutely examined their pleadings along with annexures. We have reached the conclusion that this petition is bereft of merit and thus, liable to be dismissed except in one respect. It is not disputed that the petitioner was given promotion on the post of Secretary, Market Committee, from the post of Assistant Secretary, vide order dated 25/28.2.2000 (P-3). During the period of his probation he was issued a show cause notice dated 18.12.2002, which culminated in infliction of punishment of stoppage of five annual increments without cumulative effect vide order dated 10.8.2003/4.9.2003 (P-4). It is further appropriate to mention that another notice was issued to the petitioner on 9.4.2003, which culminated in infliction of punishment of stoppage of one annual increment without cumulative effect vide order dated 10.8.2003/27.8.2003 (P-5). It is admitted position that the petitioner was put on probation on 28.2.2000 for a period of two years and the same was extendable further by another year. The work and conduct

of the petitioner during the period of probation cannot be considered satisfactory in view of show cause notice having been issued on 18.12.2002 under Rule 10 of the Punishment and Appeal Rules. Likewise, when the petitioner was working at Mansa, the District Mandi Officer, before expiry of three years period had asked him to explain about certain lapses on his part. There were other acts of omission and commission, which came to the notice of the respondent Board and resulted into issuance of a show cause notice to the petitioner on 9.4.2003. As already noticed above, he was awarded punishment of stoppage of one increment without cumulative effect. This aspect has been considered in detail in para 5 of the impugned order dated 13.9.2004/23.11.2004 (P-8) where reliance has been placed on a three Judges Bench judgment of Hon'ble the Supreme Court in the case of Satya Narayan Jhavar (supra). The relevant extract of the aforementioned para, which is self speaking, reads as under:-

> "As per the record placed on the file it is clear that the District Mandi Officer, Mansa (under whose over all supervision the appellant was working at that point of time) had on 20.8.2002- well before the expiry of three years period, asked the appellant to explain about the certain lapses on his part. Certain other acts of omission and commission were also came to the notice of the respondent Board which ultimately led to the issuance of a show cause notice to the appellant on 9.4.2003. Finding the reply unsatisfactory the appellant was given a punishment of stoppage of one increment. Similarly,

another notice was issued to him on 18.12.2002. This notice was based on the inspection report of District Mandi Officer dated 31.3.2000 vide which he reported certain deficiencies and lapses committed by the appellant. These included acts of financial irregularities also. Again on the basis of this inspection report of District Mandi Officer dated 31.3.2000 another show cause notice under Rule 10 was issued to the appellant which ultimately resulted in stoppage of five annual increments of him. Thus, from the record available on the file I am inclined to be in agreement with the learned counsel for the appellant that the work and conduct of the appellant was found to be far from satisfactory during the period of probation. Departmental proceedings and other departmental acts, as is well known, take time to muture and many a time enough time passes before a final decision is taken on a particular matter. Thus, if the maximum prescribed period of probation in the case of appellant expired due to the departmental laxity the appellant cannot take any benefit that after the expiry of the maximum period he was deemed to have been confirmed. Nowhere in Rule 10 of the rules it has been laid down that after the expiry of maximum period of probation, the employee will be deemed to have been confirmed. Neither does the order of appointment carries this stipulation. ……"

The judgement of Hon'ble the Supreme Court in the case of Satya Narayan Jhavar (supra) has been discussed in detail by the appellate authority in the impugned order where Rule 24 of the Madhya Pradesh Judicial Service (Classification, Recruitment and Conditions of Service) Rules, 1955, was subject matter of consideration. Their Lordships' after referring to the earlier judgment of Supreme Court in the cases of **State of Punjab v. Dharam Singh, AIR 1968 SC 1210** and **Dayaram Dayal v. State of M.P., (1997) 7 SCC 443**, in para 35 of the judgment has held as under:-

> "……Thus, under sub-rule (1) of Rule 24 a maximum period of 4 years' probation has been provided. The aforesaid sub-rule also stipulates that at the end of the probation period the appointee could be confirmed subject to his fitness for confirmation and to his having passed the departmental examination, as may be prescribed. In the very sub-rule, therefore, while a maximum period of probation has been indicated, yet the question of confirmation of such a probationer is dependent upon his fitness for such confirmation and his passing of the departmental examination by the higher standard, as prescribed. It necessarily stipulates that the question of confirmation can be considered at the end of the period of probation, and on such consideration if the probationer is found suitable by the appointing authority and he is found to have passed the prescribed departmental examination then the appointing authority may issue an order of confirmation. It is too well settled

that an order of confirmation is a positive act on the part of the employer which the employer is required to pass in accordance with the Rules governing the question of confirmation subject to a finding that the probationer is in fact fit for confirmation. This being the position under sub-rule (1) of Rule 24, it is difficult for us to accept the proposition, broadly laid down in the case of *Dayaram Dayal* [(1997) 7 SCC 443] and to hold that since a maximum period of probation has been provided thereunder, at the end of that period the probationer must be held to be deemed to be confirmed on the basis of the judgment of this Court in the case of *Dharam Singh* [AIR 1968 SC 1210]. (emphasis added)

The appellate authority also placed reliance on the following para of a Constitution Bench judgment in the case of **State of U.P. v. Akbar Ali Khan, AIR 1966 SC 1842**, which reads as under:-

" 6. The scheme of the Rules is clear: *confirmation in the post which a probationer is holding does not result merely from the expiry of the period of probation, and so long as the order of confirmation is not made, the holder of the post remains a probationer.* It has been held by this Court that when a first appointment or promotion is made on probation for a specified period and the employee is allowed to continue in the post, after the expiry of the said period without any specific order of confirmation he continues as a

probationer only and acquires no substantive right to hold the post. *If the order of appointment itself states that at the end of the period of probation the appointee will stand confirmed in the absence of any order to the contrary, the appointee will acquire a substantive right to the post even without an order of confirmation. In all other cases, in the absence of such an order or in the absence of such a service rule, an express order of confirmation is necessary to give him such a right. Where after the period of probation an appointee is allowed to continue in the post without an order of confirmation, the only possible view to take is that by implication the period of probation has been extended, and it is not a correct proposition to state that an appointee should be deemed to be confirmed from the mere fact that he is allowed to continue after the end of the period of probation.*" (emphasis in original)

At this stage, it would be appropriate to read Rule 10 of the Service Rules, which deals with probation of a person appointed to the Service and the same is as under:-

"10. Probation of persons appointed to Service. (1) Persons appointed to the Service shall remain on probation for a period of two years:

Provided that, -

(a) any period, after such appointment, spent on deputation on a corresponding or a higher

post shall count towards the period of probation;

(b) in the case of appointment by transfer, any period of work in equivalent or higher rank, prior to appointment to the service may, in the discretion of the appointing authority be allowed to count towards the period of probation;

(c) any period of officiating appointment to the Service shall be reckoned as period spent on probation, but no person who has so officiated shall, on the completion of the prescribed period of probation, be entitled to be confirmed unless he is appointed against a permanent vacancy; and

(d) any period of leave not exceeding six months during or at the end of probation shall be counted towards the period of probation.

(2) If, in the opinion of the appointing authority, the work or conduct of a person during the period of probation is not satisfactory, it may,

(a) if such person is recruited by direct appointment, dispense with his services or revert him to a post on which he held lien prior to his appointment to the Service by direct appointment; and

(b) if such person is recruited otherwise, -

(i) revert him to his former post; or

(ii) deal with him in such other manner as the terms and conditions of his previous appointment permit.

(3) On the completion of the period of probation of a person, the appointing authority may, -

(a) if his work and conduct has, in its opinion been satisfactory, -

(i) confirm such person from the date of his appointment if appointed against a permanent vacancy; or

(ii) confirm such person from the date from which a permanent vacancy occurs, if appointed against a temporary vacancy; or

(iii) declare that he has completed his probation satisfactorily, if there is no permanent vacancy; or

(b) if his work or conduct has not been in its opinion satisfactory it may,-

(i) dispense with his services, if appointed by direct appointment or if appointed otherwise, revert him to his former post, or deal with him in such other manner as the terms and

conditions of his previous appointment may permit; or

(ii) extend his period of probation and thereafter pass such orders as it could have passed on the expiry of the period of probation as specified in sub-rule (1):

Provided that the total period, including extension, if any, shall not exceed Three years."

A perusal of Rule 10(2) of the Service Rules shows that a person appointed to the Service is to remain on probation for a period of two years and if his work and conduct during the period of probation is not satisfactory, the appointing authority may dispense with his service in case of direct recruitment or revert him to a post on which he held lien prior to his appointment. If such a person is recruited otherwise than direct recruitment, then he is to be reverted to his former post or he can be dealt with in such a manner as terms and conditions of his previous appointment permit.

It is significant to notice the language of sub-rule (3) of Rule 10 of the Service Rules, which contemplates passing of order on completion of the period of probation. In case, the work and conduct in the opinion of the appointing authority is satisfactory then an order is required to be passed to confirm such a person from the date of his appointment, if appointed against a permanent vacancy or to confirm him from the date when a permanent vacancy occur. It is still further postulated by sub-rule (3)(a)(iiii) to declare that such a probationer has completed his probation period satisfactorily, if there was no

permanent vacancy. In cases where a person has not completed his probation period satisfactorily then according to sub-rule (3)(b) of Rule 10 of the Service Rules, the appointing authority may dispense with his services or revert him to his former post in case of direct appointment or promotion respectively or deal with him in such other manner as the terms and conditions of his previous appointment may permit. The appointing authority is also clothed with the power to extend his period of probation and pass such orders thereafter as it could have passed on the expiry of the probation period as specified in sub-rule (1). The total period of probation including extension is not to exceed three years. It is, thus, evident that some positive act is required to be done by the appointing authority either by declaring that the probationer has satisfactorily completed his probation period or that he is confirmed against a permanent vacancy from the date of his appointment or any other later date. In the absence of any rule in the Service Rules to the effect that on completion of maximum period of probation an employee would be deemed to be confirmed, it cannot be concluded that the case of the petitioner would belong to the first category of cases as opined by their Lordships' in the case of Satya Narayan Jhavar (supra). In para 11, their Lordships' have observed as under:-

> "……One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be

> deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. The other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination has not been passed. *The last line of cases is where, though under the rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired*." (emphasis added)

It is obvious that the case of the petitioner is not covered by the first or second category of cases but would be certainly covered by the last category of cases, as has been pointed out by Hon'ble the Supreme Court in the above mentioned para. The appellate authority has rightly taken the view with which we fully concur.

On the basis of principles, precedents and facts we are left with no doubt that the impugned order dated 13.9.2004/23.11.2004 (P-8) does not suffer from any legal infirmity warranting our interference. Therefore, the writ petition is liable to be dismissed.

The argument of the learned counsel for the petitioner that the order is stigmatic would not require any detailed examination because the order dated 1.12.2003/2.1.2004 (P-7), passed by the Chairman of the Board, which could have been considered as stigmatic does not exist and has merged into the orders of the appellate authority, dated 13.9.2004/23.11.2004 (P-8), which has not made any reference to any penal action which might have been taken against the petitioner and later on dropped by the authorities. We are also not felt persuaded by the argument that there is any factual mistake in the order dated 13.9.2004/23.11.2004 (P-8) because it has only referred to the facts as existed after expunging of the adverse report (P-6) and dropping of charge sheet (P-1). Therefore, it cannot be said that the order suffers from any legal infirmity.

The last submission of the learned counsel for the petitioner that there has to be deemed confirmation has also not impressed us. It is true that the petitioner was promoted as Secretary, Market Committee on 25.2.2000 and he was reverted to the post of Assistant Secretary on 1.12.2003/2.1.2004 (P-7), which is much after the maximum period of probation of three years. However, the language of Rule 10 of the Service Rules clearly suggests that a positive act is required to be performed by the appointing authority by declaring that the petitioner has completed probation period

successfully and grant him appointment against permanent post if such a post is available. Even in cases where the permanent post is not available, a declaration is required to be issued indicating that the

probationer has successfully completed his period of probation [See Rule 10 (3) of the Service Rules]. Once this is the position then the case of the petitioner would clearly fall within the four-corners of para 35 of the judgment rendered in the case of Satya Narayan Jhavar (supra).

However, learned counsel for the petitioner has argued that the petitioner is entitled to his salary as Secretary, Market Committee, that remains unpaid. It is undisputed that the petitioner was promoted on 25.2.2000 as Secretary, Market Committee in the pay scale of Rs. 7220-11660 and he continued to be paid the salary of the post of Assistant Secretary. Therefore, we are of the view that the petitioner is entitled to salary in the pay scale of Rs. 7220-11660, which is scale given to the Secretary, Market Committee.

The aforementioned submission made by the learned counsel would not survive for consideration as a sum of Rs. 41,377/- due to the petitioner for the period from 29.3.2000 to 31.3.2005 stand paid to him, in the pay scale of Secretary Market Committee. The aforementioned fact is clear from the perusal of order Annexure R-2/1 and para 13 of the written statement filed by respondent Nos. 2 and 3.

CONCLUSION:

In view of the above, writ petition fails and the order dated 23.11.2004 (P-8) reverting the petitioner from the post of Secretary, Market Committee to that of Assistant Secretary, is upheld. On account of some controversial issues having been raised, we leave the parties to bear their own costs.

(M.M. KUMAR)
JUDGE

(ARVIND KUMAR)
JUDGE

5.7.2007
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